

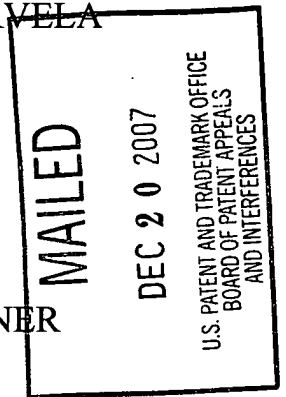
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MIKKO SIEVANEN, JONI HIETALA, and PENTTI JARVELA

Application 09/868,244
Technology Center 3700

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER



This Image File Wrapper (IFW) application was electronically received at the Board of Patent Appeals and Interferences on November 16, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

The Examiner has failed to list prior art relied upon in the 35 U.S.C. § 103(a) rejection currently on appeal under the heading “**(8) Evidence Relied Upon**” in the Examiner’s Answer mailed January 16, 2007. Reference to Lorber (U.S. Patent 3,586,325) and *Merriam-Webster Online Dictionary* are relied upon in paragraph 10, pages 8 and 10 of the Examiner’s Answer but not listed as required by *the Manual of Patent Examining Procedure (MPEP)* § 1207.02(A)(8).

Before further review, the Examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of all references mentioned in the statement of rejections. *See MPEP* § 1207.02. Appropriate correction is required.


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Further review reveals that the Appellants have submitted evidence into the Appeal Brief received by the Office on September 29, 2006. (*See* Evidence Appendix of the Appeal Brief). There is no statement indicating where in the record that the evidence was previously entered by the Examiner. As such, no new matter can be entered into the record after appeal unless it overcomes any of the rejections currently on appeal. It is unclear in the Examiner's Answer if this new evidence submitted by the Appellants has overcome any of the rejections presently on appeal. Clarification for the written record is required. *See* 37 C.F.R. §§ 41.33 and 41.37.

Accordingly, it is *ORDERED* that the application is returned to the Examiner:

- (1) to issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, paragraph (8);
- (2) to clarify the status of the Evidence submitted after Appeal in the Appeal Brief in regards to the status of the rejections presently on appeal; and
- (3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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